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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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1720
DATE MAILED:

4
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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/478,616

Applicant(s)

LAURENT ET AL.

Examiner

Zidia Pittman

Art Unit

1725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/875,870.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e)

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3
- 18) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 17 recites the phrase "immediately applying pressure...all together", which is an idiomatic phrase. What is meant by "all together"?

Claims 17-19 and 30 recite the limitation "the same main monomer". There is insufficient antecedent basis for this limitation in the claim.

In claims 25 and 26, the use of the terms "further comprises" is indefinite, because "the surface layer of the second polyolefin" listed after the terms "further comprises" is required by the independent which claims 25 and 26 are dependent upon. Thus, the first coating film does not further comprise a surface of the second polyolefin, but rather simply comprises the surface layer of the second polyolefin.

In claim 33, the term dissimilar is indefinite in that it is not readily apparent as to how the coating films are dissimilar. Specifically, are their compositions dissimilar or thicknesses dissimilar or are they dissimilar in some other way?

Claim Rejections - 35 USC § 103

Obviousness rejections set forth in this Office action

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 17-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 344 726 in view of Bonis (USPN 4,440,824).

EP 0 344 726 discloses a packaging material formed of a polyolefin based laminate. The laminate comprises a polyolefin foam layer, such as a polyethylene or ethylene-propylene rubbers, and mixtures thereof. The laminate can further include

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other films in order to enhance various properties, such as gas barrier properties, stiffness, heat resistance and sealing properties. EP '726 differs from the present invention in that it does not disclose the combination of co-extrusion and adhesive bonding of the foam layer to the coating films. However, EP '726 does disclose that the coating films can be laminated to the foamed layer by any conventional techniques, such as co-extrusion or adhesion (abstract; pg. 3 lines 22-44, 50-58; pg. 4 lines 12-58).

Bonis discloses a similar laminate wherein the coating film layers are bonded to the foam layer by coextruding the foam layer, an adhesive layer and the coating films. Bonis discloses that such a process enables the laminate to form a reliable and consistent bond (abstract; column 2 line 3 – column 3 line 19).

The skilled artisan would have found it obvious to have used the combination of conventional techniques disclosed in Bonis, namely coextruding the foam layer and coating films with a compatible adhesive layer, motivated by the desire to obtain a laminate which contained a reliable, consistent bond.

With regard to the limitations to the thickness ranges of the bonding layers and film layers, it would have been obvious to the skilled artisan to have used any reasonable thickness adhesive layer, i.e. between 5-30 microns, motivated by the desire to obtain a desired bond between the foam material and the film layer. Specifically, it would have been within the level of ordinary skill in the art to use a thick adhesive layer, i.e. 30 microns, if a strong bond is desired. Likewise, it would have been within the level of ordinary skill in the art to use a thin adhesive layer, i.e. 5

It is the examiner's position that the packaging material of EP '726 in view of Bonis is identical to or only slightly different than the packaging material prepared by the method of the claim(s), because both packaging materials are formed of a polyolefin based laminate. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). EP '726 in view of Bonis either anticipates or strongly suggests the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the EP '726 in view of Bonis.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zidia Pittman whose telephone number is (703) 305-1248. The examiner can normally be reached on Monday, Tuesday, and alternate

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn, can be reached at (703) 308-3318. The official fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718. The unofficial fax number for art unit 1725 is (703) 305-6078.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

3TP

6/19/01



TOM DUNN
SUPERVISORY PATENT EXAMINER
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